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7  
8 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

9 PETER SCHMITT,

10 Plaintiff,

11 vs.

12 WALGREEN CO.; DOES 1 through 100; and  
13 ROE CORPORATIONS 101 through 200,

14 Defendant(s).

**CASE NO.: 2:20-CV-01751-JCM-BNW**

**MOTION TO SUBSTITUTE PARTY**

15 COMES NOW Plaintiff Peter Schmitt, by and through his counsel of record,  
16 BERNSTEIN & POISSON, and submits this Motion to Substitute Party pursuant to FRCP  
17 25(a)(1).

18 This Motion is based on the papers and pleadings on file herein, the attached  
19 Memorandum of Points and Authorities, and any oral argument that the Court may entertain at  
20 the time of hearing on this matter.

21 DATED this 1st day of March 2021.

22 Respectfully submitted,

23 **BERNSTEIN & POISSON**

24 */s/ Ryan Kerbow*

25 RYAN KERBOW, ESQ.  
26 State Bar No. 011403  
320 S. Jones Blvd.  
27 Las Vegas, Nevada 89107  
Email: ryan@vegashurt.com  
28 *Attorneys for Plaintiff*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTS**

3 This is a negligence action that arises from an alleges slip and fall incident that occurred  
4 in a Walgreens parking lot in Las Vegas on September 1, 2018. Plaintiff is now deceased. A  
5 Suggestion of Death was filed on January 19, 2021.

6 **II. LEGAL ARGUMENT**

7 F.R.C.P 25(a) states in pertinent part that:

8 (1) If a party dies and the claim is not extinguished, the court may  
9 order substitution of the proper party. A motion for substitution  
10 may be made by any party or by the decedent's successor or  
11 representative. If the motion is not made within 90 days after  
12 service of a statement noting the death, the claims by or against the  
13 decedent must be dismissed.

14 Here, Mr. Steven R. Loomis was appointed as special administrator of the estate of Peter  
15 Schmitt on February 15, 2021. His duties include the duty to "commence, maintain or defend  
16 actions and other legal proceedings as a personal representative." A true and correct copy of the  
17 order is attached hereto as **Exhibit 1**. Plaintiff moves this court to allow Steve R. Loomis as  
18 representative to take the place of Peter Schmitt for purposes of prosecuting the instant action.

19 **III. CONCLUSION**

20 Plaintiff moves this court to grant Plaintiff's motion to substitute a party pursuant to  
21 F.R.C.P. 25(a).

22 DATED this 1st day of March 2021.

23 Respectfully submitted,

24 **BERNSTEIN & POISSON**

25 */s/ Ryan Kerbow*

26 RYAN KERBOW, ESQ.

27 State Bar No. 011403

28 320 S. Jones Blvd.

Las Vegas, Nevada 89107

*Attorneys for Plaintiff*

ORDER

At ECF No. [15] is a motion by plaintiff to substitute party. Plaintiff seeks to substitute Mr. Steven R. Loomis as special administrator of the estate of Peter Schmitt in place of Mr. Peter Schmitt. The motion is unopposed. ECF No. [16]; *see also* LR 7-2(d). IT IS THEREFORE ORDERED that plaintiff's motion is GRANTED.

**IT IS SO ORDERED**

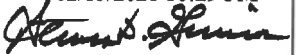
**DATED:** 5:30 pm, March 05, 2021



**BRENDA WEKSLER**  
**UNITED STATES MAGISTRATE JUDGE**

# Exhibit 1

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02/15/2021 10:29 PM

  
CLERK OF THE COURT

1 REBECCA A. MURRAY, ESQ.  
2 Nevada Bar No. 10693  
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4 Las Vegas, Nevada 89128  
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8 Attorney for Petitioner

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY NEVADA**

9 In the Matter of the Estate of:

Case No.: P-21-105752-E

10 PETER B. SCHMITT,

Dept. No.:

11 Deceased.  
12  
13  
14

**ORDER APPOINTING SPECIAL ADMINISTRATOR**

15  
16 Upon submission of a verified Ex-Parte Petition for Appointment of Special Administrator  
17 and for Issuance of Special Letters of Administration, representing as follows:

18 1. That the Decedent, PETER B. SCHMITT, died testate on the 18<sup>th</sup> day of January, 2021,  
19 in the County of Clark, State of Nevada.

20 2. That Decedent was a resident of Clark County, Nevada at the time of his death.

21 3. That Petitioner, STEVEN R. LOOMIS, was named as the Personal Representative of  
22 the Estate of Decedent, pursuant to his Last Will and Testament executed on December 1, 2020.

23 NOW, THEREFORE, IT IS HEREBY ORDERED that STEVEN R. LOOMIS, Petitioner,  
24 is appointed as Special Administrator and that Special Letters of Administration be issued to him,  
25 without bond, upon him taking the oath of office, for the purpose of administering the estate in  
26 accordance with Nevada Revised Statutes Chapter 140.040, which provides as follows:  
27  
28

**NRS 140.040 Powers, duties and immunity from liability for certain claims.**

1. A special administrator shall:

(a) Collect and preserve for the executor or administrator when appointed all the goods, chattels and receivables of the decedent, and all incomes, rents, issues, profits, claims and demands of the estate.

(b) Take charge and management of the real property and enter upon and preserve it from damage, waste and injury.

2. A special administrator may:

(a) For all necessary purposes, commence, maintain or defend actions and other legal proceedings as a personal representative.

(b) Without prior order of the court, sell any perishable property of the estate, as provided in NRS 148.170.

(c) Exercise such other powers as have been conferred by the order of appointment.

(d) Obtain leave of the court to borrow money or to lease or mortgage real property in the same manner as an executor or administrator.

3. A special administrator is not liable:

(a) To any creditor on any claim against the estate; or

(b) For any claim against the decedent except a claim involving wrongful death, personal injury or property damage if the estate contains no assets other than a policy of liability insurance.

IT IS FURTHER ORDERED that the Notice to Creditors pursuant to NRS 145.060 may be filed and published in accordance therewith;

IT IS FURTHER ORDERED that all monies received by this estate will be placed in the attorney's client trust account until further ordered by the court.

IT IS FURTHER ORDERED that any and all settlements of any lawsuits affecting Decedent's estate are subject to this Court's approval.

Dated this 2nd day of February, 2021.

Dated this 15th day of February, 2021



DISTRICT COURT JUDGE  
73A 0A6 E008 7B5E  
Veronica M. Barisich  
District Court Judge

/s/ Rebecca A. Murray

Rebecca A. Murray, Esq.  
Attorney for Petitioner

Petitioner, STEVEN R. LOOMIS, by and through his attorney, Rebecca A. Murray, Esq., respectfully represents as follows: